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3 **STATE OF CALIFORNIA**
4 **DEPARTMENT OF INSURANCE**
5

6 In the Matter of
7 JOHN THOMAS KING
8 Respondent.

**NOTICE TO RESPONDENT
OF REJECTION OF
PROPOSED DECISION**

OAH File No.: L2003090134

CDI File No. LBB 0282-AP

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14 The Insurance Commissioner has considered the Proposed Decision of the Administrative
15 Law Judge in the above-entitled matter, submitted to the Insurance Commissioner of the State of
16 California under the provisions of Section 11517 of the California Government Code, which
17 Proposed Decision is hereby ordered officially filed. The Proposed Decision was received by the
18 Department of Insurance on February 10, 2004.

19 After due consideration, the Insurance Commissioner has rejected the Proposed Decision
20 insofar as the Factual Findings, Legal Conclusions and proposed action are concerned. The
21 Insurance Commissioner will decide such matters upon the record pursuant to the provisions of
22 subdivision (c)(2)(E) of Section 11517 of the Government Code.

23 In accordance with the above-mentioned provisions of the Government Code, and prior to
24 the issuance of a final decision by the Insurance Commissioner:

- 25 1. You are entitled to a copy of the record. You will be
26 required to pay the direct costs of making the copy.
27 2. You may submit written argument to the Insurance Commissioner.
28

1 If you want a copy of the record and/or intend to submit written argument to the Insurance
2 Commissioner, please notify the following person, in writing, within 30 days of the date of this
3 notice:

4 Michael Tancredi, Staff Counsel
5 California Department of Insurance
6 300 S. Spring St. South Tower, Suite 12700
7 Los Angeles, California 90013

8 If you do not reply to this notice in writing within 30 days of the date set forth below, the
9 Insurance Commissioner will decide the case upon the record and will issue his decision without
10 further notice to you.

11 The Insurance Commissioner must issue his decision in this matter not later than 100 days
12 after the date of this notice of rejection unless the transcript of the hearing is ordered. If the
13 transcript is ordered, the decision must be issued not later than 100 days after the Insurance
14 Commissioner receives the transcript.

15 You may authorize the Insurance Commissioner to decide the case upon the record, without
16 including the transcript of the hearing. If you desire to do so, please notify the person designated
17 above in writing within 30 days of the date of this notice.

18 Dated this 14th day of May, 2004.

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21 JOHN GARAMENDI
Insurance Commissioner

22 By -s-

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24 CONNIE PERRY
Deputy General Counsel

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BEFORE THE
DEPARTMENT OF INSURANCE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOHN THOMAS KING,
Respondent.

Dept. File No. LBB 0282-AP

OAH No. L2003090134

PROPOSED DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 9, 2003 at Los Angeles, California. Complainant John Garamendi, Insurance Commissioner, was represented by Michael Tancredi, Staff Counsel. Respondent John T. King was present and was represented by William W. Hogeboom, attorney at law.

Evidence was received, the record was closed, and the matter was submitted.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. John Garamendi filed the Accusation in his official capacity as Insurance Commissioner of the State of California.

2. Respondent was first licensed by the Commissioner on September 9, 1997 as a Fire and Casualty Broker-Agent. His license will expire September 30, 2005. In a renewal application signed September 26, 2001, Respondent indicated that he had been convicted of a crime and gave additional information about the circumstances.

3. On June 27, 2000, in the Superior Court of Riverside County, State of California, in case no. CR61583, Respondent was convicted upon his plea of guilty of violating Penal Code section 182(4), conspiracy to cheat and defraud persons of property or to obtain money by false pretenses, and Penal Code section 182(1), conspiracy to commit securities fraud, both misdemeanors. As part of a plea negotiation, other charges were dismissed and these two charges were reduced from felonies to misdemeanors.

As a consequence of his conviction, the court suspended the proceedings and placed Respondent on summary probation for 36 months on various terms and conditions, including that Respondent pay fees and fines, and perform 240 hours of community service. Respondent paid the fees and fines and completed the community service and his probation.

On October 30, 2003, Respondent obtained an order of court under Penal Code section 1203.4 to set aside the guilty pleas, enter pleas of not guilty and dismiss the case.

4. Respondent has been convicted of a public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property. See Insurance Code section 1668(m)(3).

5. Respondent gave his version of the events first in a letter to the Department dated June 12, 2003 (Exhibit 8), and then in his testimony. In summary, Respondent became

1 involved in Riverside Thrift and Loan (RTL) from September 1989 through March 1990.
2 Respondent was a vice president, but was not directly involved in the formation of a group
3 that had purchased the RTL. The purchase was funded with mortgage bonds. The purchase
4 group then attempted to transform the RTL into a bank but was unable to do so, and it became
5 necessary to close the RTL and liquidate its assets. In attempting to liquidate the bonds,
6 Respondent discovered that the bonds had not been properly placed in the name of the RTL.

7
8 Respondent had not been involved when the bonds were first used to purchase
9 RTL. However, as an inducement for him to become an employee, Respondent had a stock
10 purchase agreement to receive stock in RTL. The agreement stated that Respondent had
11 ownership of the bonds, and was pledging it as collateral for the stock. However, a payroll
12 deduction for Respondent to have an ownership interest in the bonds was never initiated.

13
14 Respondent understands his conviction as relating to fraudulently obtaining the
15 stock and in the use of bonds that were not properly owned.

16
17 6. Respondent testified that others were responsible for the management of RTL, and
18 that he was hired based on his knowledge and experience in equipment leasing and financing.
19 However, he states that there were aspects of the bond transactions which seemed suspicious
20 and which, in retrospect, he realizes he should have pursued and questioned. Respondent
21 takes responsibility for those aspects of the transactions in which he was involved, although
22 they played a minor part in the larger scheme propagated by the group that purchased RTL.
23 When asked what he had learned from his involvement, Respondent stated that you don't
24 jump into something without asking a lot of questions and doing your due diligence to get
25 information. He stated that his life has become simpler now—this prior incident, which was a
26 "grandiose plan" and "looked like a home run" did not turn out well. He is content now to
27 live within the means of his insurance work.

28
29 7. As part of his plea agreement, Respondent cooperated with the District Attorney's
30 office by agreeing to be interviewed and to testify completely and truthfully concerning his
31 knowledge of the events. He also admitted that the amount at issue exceeded \$100,000.

32
33 8. Respondent is 64 years old. He is a sole proprietor of his business. He is an agent
34 for Pacific Specialty Insurance Co. He described his duties as receiving applications and
35 submissions from clients and brokers throughout the United States, largely on behalf of
36 trucking companies and related to workers' compensation coverage, and submitting them to
37 companies which he believes will bind the coverage. He is married with 4 grown children.

38
39 Before starting his insurance work in 1997, Respondent had more than 20 years
40 experience in equipment leasing and financing. He does not believe that he can return to that
41 business profitably, as the business has suffered from the economy.

42
43 The initial indictment in the criminal matter was in 1995 and amended in 1999.
44 After his plea agreement, Respondent performed his community service for a non-
45 denominational Christian church by raising money and working on missions in the United
46 States and Australia in programs to keep young teenagers off the streets.

47 CONCLUSIONS OF LAW AND DISCUSSION

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49 Based on the foregoing factual findings, the Administrative Law Judge makes the
50 following conclusions of law:

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52 1. Cause exists to suspend or revoke Respondent's license pursuant to Insurance Code
53 sections 1668(b) and 1738 in that it would be against the public interest to permit Respondent
54 to continue transacting insurance in the State of California, by reason of Findings 2, 3 and 4.

2. Cause exists to suspend or revoke Respondent's license pursuant to Insurance Code sections 1668(d) and 1738 in that Respondent is not of good business reputation, by reason of Findings 2, 3 and 4.

3. Cause exists to suspend or revoke Respondent's license pursuant to Insurance Code sections 1668(e) and 1738 in that Respondent is lacking in integrity, by reason of Findings 2, 3 and 4.

4. Cause exists to suspend or revoke Respondent's license pursuant to Insurance Code sections 1668(i) and 1738 in that Respondent has previously engaged in a fraudulent practice or act, by reason of Findings 2, 3 and 4.

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5. Cause exists to suspend or revoke Respondent's license pursuant to Insurance Code sections 1668(j) and 1738 in that Respondent has shown incompetency or untrustworthiness in the conduct of any business, or has by the commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him to the danger of loss, by reason of Findings 2, 3 and 4.

6. Cause exists to suspend or revoke Respondent's license pursuant to Insurance Code sections 1668(m)(3) and 1738 for conviction of a public offense that has as one of its necessary elements a fraudulent act and/or an act of dishonesty in the acceptance or custody of money, by reason of Findings 2, 3 and 4.

7. The crime of which Respondent was convicted contains elements of financial dishonesty. By these acts, Respondent has demonstrated a lack of honesty, trustworthiness and integrity. Although the acts were more than 13 years old, the conviction is less than four years old and Respondent completed criminal probation less than one year ago.

8. Various state licensing agencies have adopted regulations to assist in determining whether a licensee has been rehabilitated after conviction of a crime. In fact, agencies governed by the Business and Professions Code are required to do so by section 482. See, e.g., 16 California Code of Regulations ("CCR") section 99.1 (accountants), 16 CCR section 1360.2 (physicians), and 16 CCR section 1769(A)(3) (pharmacists). However, there are no such regulations respecting licensees of the Department of Insurance.

One of the more complete and detailed sets of criteria of rehabilitation was developed by the Department of Real Estate ("DRE"). In a broad sense, DRE licensees share many of the same types of duties and responsibilities towards their clients and the public as do insurance licensees, particularly with respect to the necessity of honesty, trustworthiness and integrity in their licensed activities. Therefore, reference will be made to the DRE criteria for rehabilitation to assist in evaluating the evidence of rehabilitation submitted by Respondent, not as binding but as a guide. These criteria, found at 10 CCR section 2911, are summarized as follows:

Subsection (a) passage of at least two years since the conviction;

Subsection (b) restitution;

Subsection (c) expungement of the conviction;

Subsection (d) expungement of the requirement to register as an offender;

Subsection (e) completion of the criminal probation;

1 Subsection (f) abstinence from drugs or alcohol that contributed to the crime;
2 Subsection (g) payment of any criminal fines or penalties;
3 Subsection (h) stability of family life;
4 Subsection (i) enrollment in or completion of educational or training courses;
5 Subsection (j) discharge of debts to others;
6 Subsection (k) correction of business practices causing injury;
7 Subsection (l) involvement in community, church or private programs for
8 social betterment;
9 Subsection (m) new and different social and business relationships; and
10 Subsection (n) change in attitude from the time of conviction to the present,
11 evidenced by testimony of the applicant and others, including family
12 members, friends or others familiar with his previous conduct and
13 subsequent attitudes and behavior patterns.

14 9. Respondent has addressed, and satisfied, many of these criteria of rehabilitation.
15 See Findings 3, 5, 6, 7 and 8. He is commended for those efforts. However, what is missing
16 from Respondent's presentation is any outside verification of his rehabilitation, except for his
17 plea agreement and satisfaction of it. For example, there was no testimony by anyone other
18 than Respondent that he: has corrected his business practices that caused injury; has had
19 involvement in community, church or private programs for social betterment; has new and
20 different social and business relationships (other than as ordered by the criminal court);
21 and/or has a new attitude and behavioral patterns. Respondent alone testified at the hearing.
22 He brought no supporting witnesses, declarations or letters of reference. While Respondent's
23 testimony of rehabilitation was sincere, there are concerns about his truthfulness and honesty,
24 as noted above, which cannot be ignored.

25 10. Under these circumstances, it is appropriate to revoke Respondent's license and
26 stay the revocation while allowing a restricted license under terms and conditions that will
27 protect the safety and welfare of the people of the State of California, including a suspension
28 to accomplish some of the terms and conditions. Under a restricted license pursuant to
Insurance Code section 1742, Respondent will be supervised by a licensee of the Department
who is aware of his restrictions and the reasons therefore, and will be required to provide the
appropriate level of supervision.

Section 1742 provides, in pertinent part:

"Where a person who is or has been licensed under this chapter has been found
by the commissioner to have violated any provision of this code which would
justify the suspension or revocation of a license held . . . , the commissioner
may, after hearing, revoke the license held . . . , and in lieu thereof issue to such
a person a restricted license. The commissioner may impose any reasonable
conditions upon the acquisition of such restricted license or the conduct of the
holder thereof. The holder of the restricted license has no property right therein
and the commissioner may, with or without either hearing or cause, suspend or
revoke a restricted license. . . . The holder of a restricted license is subject to

all the provisions of this code and such license shall be kept in force and
renewed in the same manner, at the same time, and subject to the same
conditions and fees as are applicable to an unrestricted license to act in the
same capacity."

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2 ORDER

3 WHEREFORE, THE FOLLOWING ORDER is hereby issued:

4 All licenses and licensing rights issued to Respondent John T. King are hereby
5 revoked; however, the revocation is stayed and Respondent's license is hereby restricted
under Insurance Code section 1742 for two (2) years on the following terms and conditions:

6 1. Respondent's insurance license shall be actually suspended for thirty (30) days
7 from the effective date of this Decision.

8 2. Respondent shall obey all laws, rules and regulations governing the rights, duties
and responsibilities of an Insurance licensee in the State of California.

9 3. Respondent is prohibited from solo practice of any activities for which the
10 Department requires a license. Respondent may perform any activities for which a license is
required by the Department only as a partner or employee of, or if he is supervised by,
11 another licensee of the Department. Before performing any such activities, Respondent shall
submit a statement signed by this licensed partner, employer or supervisor which shall certify
12 that this person has read this Decision and will exercise close supervision over the
performance by Respondent of all activities for which Respondent's insurance license is
13 required.

14 4. That no final subsequent determination be made, after hearing or upon stipulation,
that any cause for disciplinary action occurred within the period of probation. Should such a
15 determination be made, the Commissioner may, in his discretion, vacate and set aside the stay
order and reinstate the stayed revocation. Should no such determination be made, the stay
16 imposed herein shall become permanent.

17 DATED: February 5, 2004.

18 DAVID B. ROSENMAN
19 Administrative Law Judge
Office of Administrative Hearings
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